



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

December 19, 2002

Ms. Zandra L. Narvaez
Attorney
Legal Services Division
City Public Service of San Antonio
P.O. Box 1771
San Antonio, Texas 78296-1771

OR2002-7308

Dear Ms. Narvaez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174247.

The City Public Service Board of the City of San Antonio ("CPS") received a request for eleven categories of information relating to CPS's provision of utilities. You state that you have provided information responsive to categories one and five through eleven to the extent that it exists.¹ You state that CPS has sought clarification regarding category four. You claim that information responsive to categories two and three is excepted from disclosure under a previous determination issued by this office in Open Records Letter No. 01-0184 (2001). *See* Open Records Decision No. 673 (2001) (previous determinations generally). In the alternative, you argue that the information responsive to categories two and three is excepted from release under sections 552.101, 552.104, and 552.133 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records

With regard to your statement that you have sought clarification as to category four of the instant request, we note that a governmental body must make a good-faith effort to relate the request to the information that it holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). If what information is requested is unclear, the governmental body may ask the requestor to clarify the request. *See* Gov't Code § 552.222(b). Although you indicate that CPS has sought a clarification, the requestor apparently has not responded to your request. Because the requestor has not responded to the request for a clarification, CPS need not respond to the portion of the request for which it is seeking clarification. Should the requestor submit such a response, CPS must seek a ruling from this office before withholding any responsive information from the requestor. *See also* Open Records Decision No. 663 (1999) (providing for tolling of ten business day time limit to request attorney general decision while governmental body awaits clarification).

In Open Records Letter No. 01-0184 (2001) this office held that with regard to future requests to CPS for the names, addresses, phone numbers, dates of birth, social security numbers, driver's license numbers, places of employment, employers' addresses, employers' phone numbers, family information, roommate information, or dates of connection or service of CPS's customers, CPS may consider the ruling in ORL 01-0184 to be a previous determination under section 552.301(a) of the Government Code and need not request determinations from this office as long as the resolution referenced in that ruling deeming all information regarding retail customers to be a competitive matter for purposes of section 552.133(b) stays in effect. As categories two and three of the instant request ask for the names of CPS customers, we find that ORL 01-0184 governs in the situation at hand. Accordingly, CPS may withhold the information responsive to categories two and three of the instant request pursuant to ORL 01-0184. As ORL 01-0184 is dispositive, we need not consider your arguments under sections 552.104 and 552.133.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

to the extent that those records contain substantially different types of information than that submitted to this office.

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Maverick F. Fisher
Assistant Attorney General
Open Records Division

MFF/seg

Ref: ID# 174247

Enc: Submitted documents

c: Ms. Loralan K. Seiffert
Contracting Officer
Department of The Air Force
12 CONS/LGCA
395 B Street West, Suite 2
Randolph AFB, Texas 78150-4525
(w/o enclosures)